

No. 546

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## In the Supreme Court of the United States.

Washington, June 1, 1874.

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WILLIAM D. POWERS, Plaintiff in Error,

v. JAMES M. COOPER,

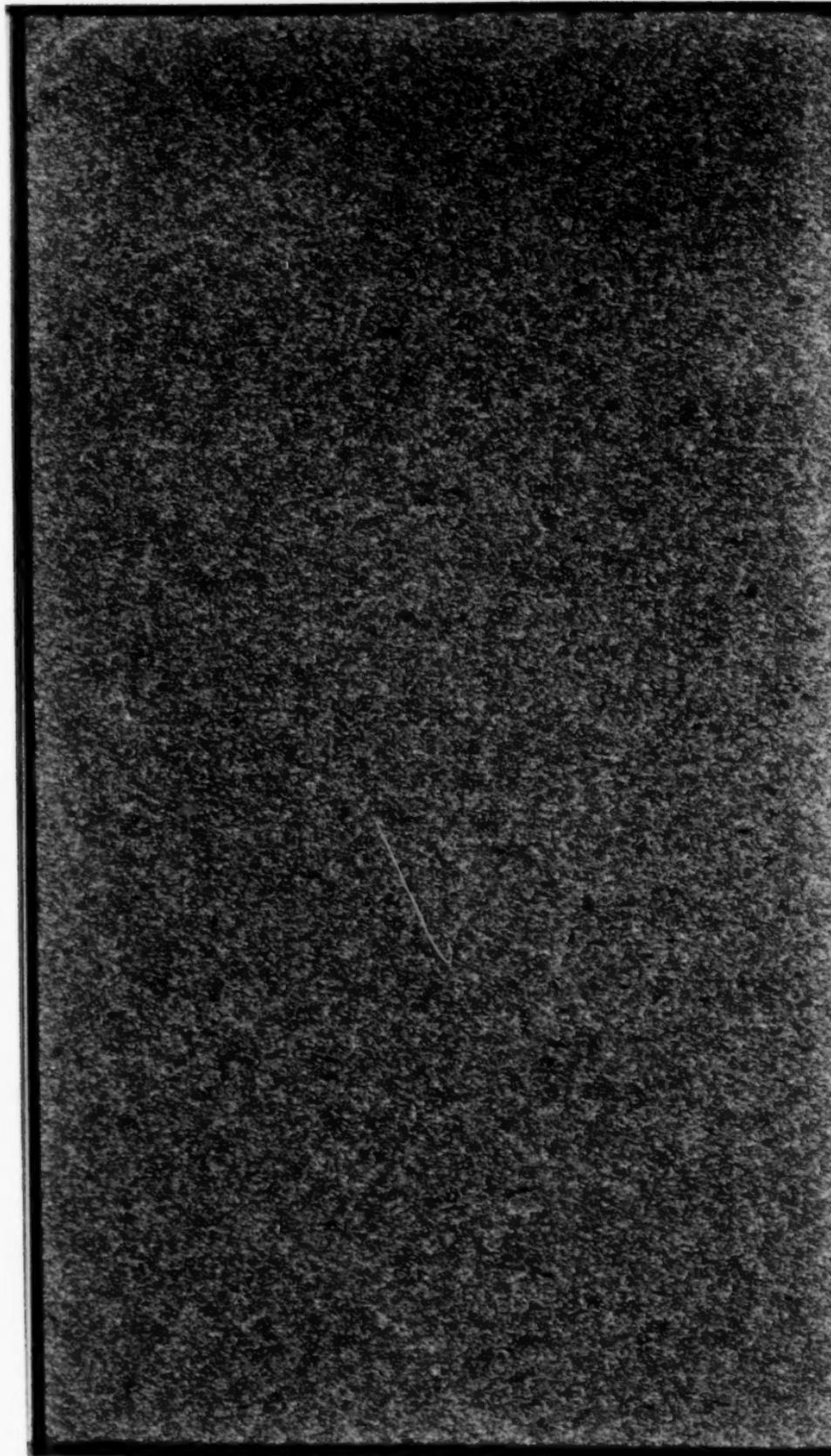
William D. Powers, Respondent.

NOTICE OF APPEAL FROM THE  
SUPREME COURT OF PENNSYLVANIA, APPALACHIAN,  
JULY TERM, 1873.

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NOTICE OF APPEAL FROM THE  
SUPREME COURT OF PENNSYLVANIA, APPALACHIAN,  
JULY TERM, 1873.

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# In the Supreme Court of the United States.

OCTOBER TERM, 1923.

WILLIAM R. RODMAN, UNITED STATES }  
Marshal, petitioner, } No. \_\_\_\_.  
v.  
ROLAND R. POTIER, RESPONDENT. }

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

The Solicitor General on behalf of William R. Rodman, the United States Marshal for the District of Rhode Island, prays that a writ of certiorari be issued to review the judgment rendered by the Circuit Court of Appeals for the First Circuit on the 21st day of June, 1923, reversing a judgment rendered by the United States District Court for the District of Rhode Island.

### STATEMENT OF THE CASE.

On the 25th day of October, 1918, Major Alexander P. Cronkhite, United States Army, met his death by gunshot wounds at Camp Lewis, in the State of Washington. Thereafter, on the 13th day of October, 1922, Roland R. Pothier, the respondent, and one, Robert Rosenbluth, were indicted for the murder of said Cronkhite by the District Court of the United States for the Southern Division of the Western District of the State of Washington, the

indictment alleging that Major Cronkhite had been murdered upon territory under the exclusive jurisdiction of the United States. Pothier was later apprehended in the State of Rhode Island and committed to the custody of the marshal of the District of Rhode Island. On the 6th day of December, 1922, he sued out a writ of *habeas corpus*, which was heard by the United States District Court for the District of Rhode Island. On the same day the United States Attorney presented to the same court a petition for an order of removal. These two proceedings were heard together, and after hearing the District Court refused to release the prisoner and entered an order requiring his removal to the Southern Division of the Western District of the State of Washington for trial upon the indictment.

Thereafter an appeal was taken by Pothier to this court, which transferred it to the Circuit Court of Appeals for the First Circuit, upon the ground that the appeal should have been taken to that court. *Pothier v. Rodman* (March 12, 1923).

The Circuit Court of Appeals on the 21st day of June, 1923, reversed the order of the District Court which had directed the removal of the respondent, and denied the petition upon which it was based, and also reversed the order of the District Court dismissing the writ of *habeas corpus* and ordered that the respondent be discharged from custody. It is to review this decision that the writ of certiorari is sought. The decision of the Circuit Court of Appeals was based solely upon its ground that the *locus* of

the alleged crime was not territory under the exclusive jurisdiction of the United States. This question was thus treated below as one involving the jurisdiction of the court which found the indictment. That view, however, is erroneous. The question is not one of the jurisdiction of the District Court for the Western District of Washington, but of the jurisdiction of the United States. *Louie v. United States*, 254 U. S. 548.

The United States submits that the judgment of the Circuit Court of Appeals was erroneous for the following reasons:

**At the time of the alleged crime, exclusive jurisdiction over the territory embracing the locus thereof had been expressly ceded by the State of Washington to the United States.**

On December 2, 1916, the Secretary of War, with the approval of the President, agreed with Pierce County, Washington, that in consideration of the donation by said county to the United States of certain lands theretofore designated by the Secretary of War, the United States would establish thereon and maintain a permanent military reservation. (R. p. 185.)

Thereafter, on January 27, 1917, the Legislature of the State of Washington, by an act duly passed, imposed upon Pierce County the duty, and fully empowered it, to purchase or condemn the lands so designated by the Secretary of War, for donation to the United States, and by said act expressly

ceeded to the United States exclusive jurisdiction thereof. (R. pp. 135, 146.)

The statute of the State of Washington is set forth in full beginning upon page 135 of the Record. One of the purposes of the act, as set forth in its title, is "Granting the consent of the State to such conveyance and ceding exclusive legislative jurisdiction to the United States over the lands so conveyed."

Section 20 of the act reads as follows:

Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section 8 of Article I of such Constitution, the consent of the Legislature of the State of Washington, is hereby given to the United States to acquire, by donation from Pierce County, title to all lands herein intended to be referred to, to be evidenced by the deed or deeds of Pierce County signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, *and the consent of the State of Washington is hereby given to the exercise by the Congress of the United States of exclusive legislation in all cases whatsoever over such tracts or parcels of land so conveyed to it: Provided*, Upon such conveyance being concluded a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land to be filed in the auditor's office of Pierce county, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: *And provided*, That all civil process

issued from the courts of this State and such criminal process as may issue under the authority of this State, against any person charged with crime in cases arising outside of said reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made.

Paragraph 17 of Section 8, Article I of the Constitution of the United States gives Congress power—

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places *purchased* by the Consent of the Legislature of the State in which the same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-yards, and other needful buildings.

The crime charged was murder, and by Paragraph 3 of Section 272 of the Penal Code murder is a crime against the United States—

When committed within or on any lands reserved or *acquired* for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

The place where the alleged crime was committed was included within the territorial limits over which the court which found the indictment had jurisdiction. See Judicial Code, Section 112, by which Pierce County is included in the territory which constitutes the Southern Division of the Western District of Washington.

At the time of the alleged crime (October 25, 1918) the land embracing the *locus* thereof had been turned over by Pierce County to the United States and the United States had established thereon a military cantonment and was exercising over the same exclusive control and jurisdiction (R. pp. 24, 27, 31) pursuant to consent given by the Legislature of the State of Washington.

Where lands are, with the consent of the State, "acquired" by the United States for one of the purposes specified in the constitutional provision, the jurisdiction of the United States becomes exclusive. *Fort Leavenworth Railroad Co. v. Lowe*, 114 U. S. 525.

The agreement of December 2, 1916, provided for the designation of the lands by the Secretary of War, and they were at the time designated by the Secretary of War (R. pp. 24-25), and thereafter, on January 27, 1917, the Legislature of the State of Washington by the Act already cited expressly authorized and requested Pierce County to purchase or condemn the same for *donation to the United States*. Designated tracts aggregating 36,930 acres, were duly condemned by Pierce County in pursuance

of the authority and direction of the Legislature of the State, and before July 1, 1918, such lands, which embraced the *locus* of the alleged crime, were *actually donated to and actually accepted by* the United States (R. p. 30), and at the time of the murder the United States was using the same for military training and maneuvers, with the assent of the Legislature of the State, and the United States was in fact exercising exclusive jurisdiction and control over the same. (R. p. 30 *et seq.*, p. 39.) At the time last mentioned, as respects the lands described, the agreement of December 2, 1916, had been performed and completed by both parties to the transaction and nothing remained to be done except the delivery by Pierce County to the United States of the deed evidencing title to the property. Although at that time the transaction as respects this 36,930 acres had been completed on both sides, and the deed offered, the execution and delivery of the deed had been postponed at the suggestion of the War Department until the remainder of the lands embraced in the agreement of December 2, 1916, had been purchased or condemned by Pierce County, so that all the land could be included in one deed. (R. p. 31.) The deed to the above-mentioned tract, as well as the remainder of the tract embraced in Camp Lewis, was executed on October 1, 1919, and recorded on November 15, 1919. (R. p. 148.)

**At the time of the murder the United States was exercising, with the consent of the legislature of the State, exclusive *de facto* jurisdiction over the territory embracing the locus of the crime.**

The murder took place at Camp Lewis. Cronkhite was shot while performing his duties as an Army officer at such camp. Pothier and Rosenbluth, who are indicted for the murder, were subordinates of the murdered man, and the alleged murder took place while all three were engaged in Army maneuvers.

Camp Lewis was practically completed on September 1, 1917. Barracks, streets, waterworks, sewers, etc., had been constructed, and on the date last mentioned the 91st Division of the Army was then in camp and in course of training. Guards were established about the area and military rules and regulations were established and enforced, and the administration and control of the territory *de facto*, if not *de jure*, was exclusively and completely in the United States. (R. p. 39 *et seq.*) This exclusive administration and control was fully assented to by the State authorities, and no State officer exercised, or undertook to exercise, any authority, control, or jurisdiction whatsoever within the area embraced in Camp Lewis.

Such was the situation when Cronkhite was killed on October 25, 1918.

In the case of *Holt v. United States*, 218 U. S. 245, a murder case, the point was made by plaintiff in error that the record failed to show exclusive Federal jurisdiction over the place where the crime was laid.

This court, Mr. Justice Holmes writing, said at page 252:

The documents referred to are not before us, but they properly were introduced, and, so far as we can see, justified the finding of the jury, even if the evidence of the *de facto* exercise of exclusive jurisdiction was not enough or if the *United States was called on to try title in a murder case*. We think it unnecessary to discuss this objection in greater detail.

**The District Court was right in refusing to discharge the respondent in a habeas corpus proceeding merely because a controverted question of fact had been raised.**

Whether the authority of the United States had or had not attached to the specified place of the alleged murder was a question of fact to be decided by the District Court for the Western District of Washington, and even if that authority had not attached, that court had jurisdiction to determine the question. The question was not one of the jurisdiction of that court but one which went to the merits of the case. In other words, the decision of that question would be one of the elements tending to show that the respondent had or had not violated the laws of the United States. Such questions are for the determination of the trial court. *Henry v. Henkel*, 235 U. S. 219. Such was the reasoning of the district judge who, in his opinion (Record, p. 50), said:

While it is true that in order to establish the crime against the United States it must appear